

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, )  
 )  
 v. ) Criminal No. 03-10367-MEL  
 )  
 JAMES T. RICHARDS, )

**GOVERNMENT'S MOTION REGARDING STAY OF PROCEEDINGS  
PENDING RESOLUTION OF DEFENDANT'S APPEAL**

On July 7, 2004, the defendant filed a motion to recuse Judge Lasker from this case (Docket Entry No. 64). The motion was denied by order dated July 12, 2004 (Docket Entry No. 65). On August 2, 2004, in this Court, the defendant filed a letter he had written to the Clerk of the "U.S. Court of Appeals" in which he stated a desire to appeal the denial of his motion to recuse (Docket Entry No. 70). The letter was treated as a notice of appeal and was forwarded to, and subsequently docketed by, the Clerk's office for the United States Court of Appeals for the First Circuit (Docket Entry No. 80). The defendant has subsequently filed numerous other motions in this Court. The United States seeks a ruling from this Court as to whether all proceedings in this Court will be stayed pending resolution of the matter that has now been docketed in the Court of Appeals.

As a general rule, the filing of a notice of appeal divests a district court of authority to proceed with respect to any matter touching upon, or involved in, the appeal. United States v. Brooks, 145 F.3d 446, 455 (1<sup>st</sup> Cir. 1998); United States v. Mala, 7 F.3d 1058, 1061 (1<sup>st</sup> Cir. 1993). The First Circuit has

stated that this rule

derives from the notion that shared jurisdiction almost always portends a potential for conflict and confusion, and although there has been some movement in the direction of a more flexible approach, the principle that jurisdiction over a single case ordinarily should reside in a single court at any single point in time has widespread applicability. Allowing more than one court to take charge of a case at any given moment often disserves the interests of comity and judicial economy.

Brooks, 145 F.3d at 456 (internal citations omitted). An exception to this rule allows a district court to proceed with a case "if the notice of appeal is defective in some substantial and easily discernible way (if, for example, it is based on an unappealable order)..." Brooks, 145 F.3d at 456.

In the present case, the United States submits that this Court's denial of the defendant's recusal motion is not an appealable order. See In re Martinez-Catala, 129 F.3d 213, 217 (1<sup>st</sup> Cir. 1997) (Ordinarily, a district judge's refusal to recuse is reviewable only on appeal of a final judgment.) On its own, that fact would appear to weigh in favor of this Court's maintaining control of the case and sharing jurisdiction with the Court of Appeals. However, it is possible that the Court of Appeals may liberally construe the defendant's pro se notice of appeal as a petition for a writ of mandamus, which may properly be considered by the Court of Appeals on an interlocutory basis. See id. at 217-18.

In addition, the issue upon which the defendant bases his attempted appeal - recusal - touches upon all remaining issues


before this Court since each will require rulings from the very judge the defendant has sought to have recused from the case. As a result, the issue on appeal does not appear to create the type of situation which would accommodate shared jurisdiction over the case<sup>1</sup> and it may very well be appropriate to stay the proceedings in the district court pending a mandate from the First Circuit.

Accordingly, the United States seeks a ruling as to whether proceedings before this Court will be temporarily stayed pending the resolution of the matter which the defendant has caused to be docketed in the Court of Appeals.

Respectfully submitted,

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By:

  
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August 23, 2004

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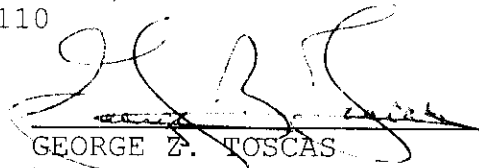
<sup>1</sup> See United States v. Brooks, 145 F.3d 446, 456 (1<sup>st</sup> Cir. 1998) ("By its nature, any suggestion of shared jurisdiction is sensitive and, thus, the administration of this principle requires a delicate touch. At most, shared jurisdiction flourishes in a circumscribed cluster of situations, the handling of which is not inconsistent with the prosecution of an appeal. These situations include the processing of such peripheral or ancillary aspects of the case as motions for counsel fees, actions 'in aid of execution of a judgment that has been appealed and not stayed,' and orders relating to procedures 'in aid of the appeal.'") (internal citations omitted).

CERTIFICATE OF SERVICE

This is to certify that I have this day served upon the persons listed below a copy of the foregoing document by depositing in the United States mail a copy of same in an envelope bearing sufficient postage for delivery:

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August 23, 2004